



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703) 583-3800 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Northern Virginia Electrical Cooperative  
FOR  
Davis Drive Electrical Ductbank Installation  
Virginia Pollutant Discharge Elimination System  
Permit VAR10, Registration No. VAR10N816**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Northern Virginia Electric Cooperative regarding the Davis Drive Electrical Ductbank Installation project, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "NOVEC" means Northern Virginia Electric Cooperative, a non-stock corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. NOVEC is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
9. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.

14. "Pollution" means "such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are 'pollution.'" Va. Code § 62.1-44.3.
15. "Registration Statement" means a registration statement for coverage under the State Permit.
16. "Site" or "Project" means the Davis Drive Electrical Ductbank Installation project located at Davis Drive in Sterling Virginia, from which discharges of stormwater associated with construction activity occur.
17. "State Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
19. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
21. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
22. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited

to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

23. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
24. “Va. Code” means the Code of Virginia (1950), as amended.
25. “VAC” means the Virginia Administrative Code.
26. “VESC Regulations” means the Virginia Erosion and Sediment Control (VESC) Regulations, 9 VAC 25-840-10 et seq.
27. “VPDES” means Virginia Pollutant Discharge Elimination System.
28. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
29. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
30. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
31. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. NOVEC holds an easement on Davis Drive located in Sterling, Virginia, and is the construction activity operator for the Project, which is associated with the installation of an electrical ductbank. DEQ is the VSMP Authority for the Project.

2. DEQ inspected the Project on January 9, 2020, as a result of a complaint by neighboring property owners of the easement. The results of the inspection identified no coverage was authorized under the State Permit for the project. DEQ issued WL No. SW2020-01-NRO-0002 to NOVEC on January 24, 2020, directing NOVEC to obtain coverage under the State Permit for the Project.
3. NOVEC applied for and, on May 20, 2020, was granted coverage under the State Permit. NOVEC was assigned registration number VAR10N816.
4. The State Permit allows NOVEC to discharge stormwater associated with construction activities from the Site to the surface waters listed in NOVEC's Registration Statement, which are Beaverdam Run, Broad Run, Horsepen Run, and Sugarland Run, in strict compliance with the terms and conditions of the State Permit.
5. Beaverdam Run, Broad Run, Horsepen Run, and Sugarland Run are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
6. On August 2, 2021, and August 17, 2021, DEQ staff conducted inspections of the Site. Inspection reports and a Request for Corrective Action, to be completed by August 16, 2021, and September 7, 2021, respectively, were delivered to the Operator on August 9 and August 31, 2021.
7. On September 8, 2021, DEQ issued WL SW2021-09-NRO-0001 to NOVEC citing failure to maintain a SWPPP and a notice of Permit coverage letter on Site, failure to implement inlet protection and functional sediment trapping controls, and failure to install a construction entrance.
8. DEQ contacted NOVEC on October 12, 2021, and performed a follow-up inspection of the Site on October 13, 2021.
9. During the October 13, 2021, Site inspection, DEQ staff noted that several SWPPP deficiencies previous noted had been corrected, but also noted that the SWPPP was still not being updated to reflect the required modifications or plan amendments, or actions taken to address deficiencies self-identified through SWPPP inspections or previously identified by DEQ.
10. State Permit Part II.C states: "SWPPP amendments, modification, and updates. 1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP. 2. The SWPPP shall be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP

authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures shall be accomplished as described in Part II H. 3. The SWPPP shall clearly identify the contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure. 4. The operator shall update the SWPPP as soon as possible but no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) Major grading activities occur; (2) Construction activities temporarily or permanently cease on a portion of the site; and (3) Stabilization measures are initiated; b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified; c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply; d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property; e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release; f. Measures taken to prevent the reoccurrence of any prohibited discharge; g. Measures taken to address any evidence identified as a result of an inspection required under Part II G. 5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.”

11. State Permit Part II.F states: “SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”
12. During the August 2, 17, and October 13, 2021 inspections of the Site. DEQ staff observed that E&SC measures had not been installed or properly installed and/or conditions at the Site were not in compliance with minimum standards regarding inlet protection and construction vehicle access routes. Specific DEQ observations included:

- a. During the Site inspection on October 13, 2021, DEQ staff observed that inlet protection was absent from operable curb inlets, that sediment was in the gutter pan of Davis Drive, and that no measures were observed in place to remove sediment from the road and gutter pan. Similar or related observations were noted in a Warning Letter regarding the Site inspections performed on August 2 and 17, 2021.
  - b. DEQ observed that no construction entrance was installed at the Site during the Site inspection on August 2, August 17, and October 13, 2021, and that construction traffic was entering and exiting the denuded soils in the project areas with soil/dirt observed on the adjacent paved roads.
13. 9 VAC 25-840-40.10 states that all storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
14. 9 VAC 25-840-40.17 states that where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.
15. 9 VAC 25-870-54.B states that an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
16. 9VAC 25-870-310(A) states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."
17. 9VAC 25-31-50 states, "Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to...[d]ischarge stormwater into state waters from municipal separate storm sewer systems or land disturbing activities."
18. Va. Code § 62.1-44.5(A) states: "Except in compliance with a certificate or permit issued by the Board or other Entity authorized by the Board to issue a certificate or permit

pursuant to this chapter, it shall be unlawful for any person to ... [d]ischarge stormwater into state waters from Municipal Separate Storm Sewer System or land disturbing activities.”

19. Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.
20. The Department has not issued coverage under any permit or certificate to NOVEC other than the coverage under the State Permit as described above in Sections C(2) through C(4).
21. 9VAC 25-88-70 states: “Any operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-870.
22. On October 21, 2021, DEQ issued NOV No. SW2021-10-NRO-002 to NOVEC for the violations described above.
23. On October 27, 2021, NOVEC submitted a response with photographic documentation to DEQ noting the following: 1) A construction entrance was installed where construction traffic was entering and exiting the site. The adjacent curb inlet was equipped with a gutter buddy to filter sediment laden water before entering the curb inlet, and a Super Silt Fence was installed around the wetlands on site to prevent sediment laden water from entering waterways. Sediment within the gutter pan was cleaned to prevent sediment from entering the storm sewer; 2) Stabilization measures were installed in denuded areas; 3) The SWPPP was updated to reflect additional measures taken on Site.
24. On December 8, 2021, Department staff and representatives of NOVEC had a conference call and discussed the violations and corrective actions.
25. Based on the results of the August 2, 17, and October 13, 2021, inspections and DEQ’s corresponding file reviews, the October 27, 2021, NOV reply, the December 8, 2021, conference call, and related correspondence and documentation between DEQ and NOVEC, the Board concludes that NOVEC has violated Va. Code § 62.1-44.5(A), 9VAC25-31-50, 9VAC 25-840-40.10, 9VAC 25-840-40.17, 9VAC 25-870-54.B, 9VAC 25-870-310(A), and State Permit Parts II.C.2 and II.F, as described in paragraphs C(6) through C(19) of this Order.
26. On February 4, 2022, DEQ staff conducted an inspection of the Site in follow-up to a notice of permit termination request submitted by NOVEC. DEQ staff observed that the Site accurately reflected the corrective actions presented by NOVEC in the NOV reply submitted on October 27, 2021, and that the violations described in this Order have been adequately corrected.



#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders NOVEC and NOVEC agrees to pay a civil charge of **\$17,550** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

NOVEC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, NOVEC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of NOVEC for good cause shown by NOVEC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. SW2021-10-NRO-002 dated October 21, 2021, in WL No. SW2021-09-NRO-0001 dated September 8, 2021, and in WL No. SW2020-01-NRO-0002 dated January 24, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NOVEC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NOVEC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NOVEC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by NOVEC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NOVEC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. NOVEC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NOVEC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NOVEC. Nevertheless, NOVEC agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after NOVEC has completed all of the requirements of the Order;
- b. NOVEC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NOVEC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NOVEC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NOVEC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NOVEC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NOVEC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NOVEC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NOVEC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5<sup>th</sup> day of August, 2022



Thomas A. Faha Regional Director  
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Northern Virginia Electrical Cooperative voluntarily agrees to the issuance of this Order.

Date: June 7, 2022 By: [Signature] Pres. & CEO  
(Person) (Title)  
Northern Virginia Electric Cooperative

Commonwealth of Virginia

City/County of PRINCE WILLIAM

The foregoing document was signed and acknowledged before me this 7<sup>th</sup> day of

JUNE, 2022, by DAVID E. SCHLEICHER who is

PRESIDENT & CEO of Northern Virginia Electric Cooperative, on behalf of the corporation.

[Signature]  
Notary Public

360937  
Registration No.

My commission expires: 8/31/2022

Notary seal:

